

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:14-CR-244-BR
No. 5:16-CV-78-BR

ANTHONY ARTIS,)
Petitioner,)
v.)
UNITED STATES OF AMERICA,)
Respondent.)

ORDER

On 15 August 2018, on petitioner's request, U.S. Magistrate Judge Robert B. Jones, Jr. ordered petitioner's 28 U.S.C. § 2255 motion, including amendments, held in abeyance pending a decision in United States v. Simms, No. 15-4640 (4th Cir. Filed Oct. 26, 2015), and directed the parties to file a status report within 14 days of the Simms decision. (DE # 63.)

On 24 January 2019, the Fourth Circuit Court of Appeals *en banc* issued that decision, holding that 18 U.S.C. § 924(c)(3)(B), otherwise known as the "residual clause" of the definition of a "crime of violence," is unconstitutionally vague. United States v. Simms, 914 F.3d 229, 236 (4th Cir. 2019). However, the Fourth Circuit stayed issuance of the mandate pending the Court's decision in United States v. Davis, No. 18-431, ___ S. Ct. ___, 2019 WL 98544 (cert. granted Jan. 4, 2019). United States v. Simms, No. 15-4640 (4th Cir. Feb. 4, 2019).

In light of the Simms decision, the parties here timely filed their respective status reports and debate whether Simms is binding on this court prior to the issuance of the mandate. (DE ## 64, 65.) Petitioner requests that the court apply Simms now, vacate his sentence, and schedule a resentencing hearing. The government maintains that Simms is not the law of the Fourth Circuit until the mandate issues, and therefore, this proceeding remains in abeyance. Alternatively, the government requests that the proceeding be held in abeyance pending the

decision in Davis.

The parties agree that the Court in Davis granted certiorari on the same question at issue in Simms. Petition for Writ of Certiorari at I, United States v. Davis, No. 18-431, 2018 WL 4896751, at *I (U.S. Oct. 3, 2018). Whatever the precedential value of Simms at this time, the court concludes that this proceeding should be held in abeyance pending the decision in Davis. Accordingly, petitioner's § 2255 motion and amendments thereto are hereby STAYED pending the decision in Davis. Within 14 days of the decision in Davis, the parties shall file briefs setting forth their respective positions on the effect of that decision on this proceeding.

This 26 March 2019.

A handwritten signature in green ink, appearing to read "W. Earl Britt", is positioned above a horizontal line.

W. Earl Britt
Senior U.S. District Judge